



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case Reference</b>	: CHI/00HN/LDC/2020/0064
<b>Property</b>	: 12 Carlton Road, Bournemouth, BH1 3TG
<b>Applicant</b>	: Tyrrel Investments Inc.
<b>Representative</b>	: Napier Management Services Limited
<b>Respondent</b>	: P Crowsley (Flat A)
<b>Representative</b>	: N/A
<b>Type of Application</b>	: To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member</b>	: D Banfield FRICS Regional Surveyor
<b>Date and venue of CMH</b>	: N/A
<b>Date of Decision</b>	: Determined on the papers without an oral hearing on 13 October 2020

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**DECISION**

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**Dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works of repair to a failed brickwork arch to a window subject to none of the costs of this application being charged to the Lessees by way of service charge or any other means.**

**In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **Background**

1. The Applicant sought a determination of liability for and the reasonableness of service charges for the current service charge year, 2020 in respect of two elements of work, namely to the roof and chimney to the property. Those items of work, plus matters uncovered during external decoration which had been subject to consultation but which had been overspent, were also the subject of an application for dispensation with consultation requirements and this is the subject of this determination.
2. Directions were made on 1 September 2020 in respect of both applications and were served upon the lessees together with a form for completion indicating whether they agreed with the application and whether they objected to the matter being determined without an oral hearing.
3. It was also stated that those lessees who agreed to the application or failed to return the form would be removed as Respondents.
4. An objection was received from Mr Crowsley of Flat A and the other lessees have been removed as Respondents in accordance with the above paragraph.
5. On 22 September 2020 the Applicant informed the Tribunal that part of the application for dispensation was withdrawn, the Applicant deciding to proceed with S.20 consultations in respect of works to the roof and chimney.
6. The application before the Tribunal therefore relates solely to the works indicated on the application form as External Redecoration Additional Expenditure and described as works to a brickwork arch to the window and surrounding brickwork which was in a precarious state. By using the high level access already in place it was believed that the likelihood of additional costs at a later date were avoided.
7. No requests have been received for an oral hearing and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
8. An electronic bundle comprising 249 pages has been provided by the Applicant.
9. It is clear that the bundle was prepared in respect of the original wider application which was also in respect of roof and chimney works. No reference is made by either party to the works to the brick arch.
10. The Tribunal considers however that sufficient information is available from the Application form as referred to at paragraph 6 above and will make its determination on this basis.

11. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

### **The Law**

12. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

13. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following
  - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
  - f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
  - h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
  - i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## Submissions

14. The Applicant's submissions are taken as the explanation given in paragraph 6 above.
15. The Respondent's submissions relate to the roof issue and are not relevant to this application.

## Determination

16. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
17. The case of Daejan v Benson referred to above provides guidance to the Tribunal when considering the issues raised by all parties.
18. As indicated in the Tribunal's Directions the sole issue before it is whether Lessees have been prejudiced by the lack of consultation. No determination is made as to whether the costs are reasonable or recoverable, that being a matter for an application under S.27A Landlord and Tenant Act 1985.
19. The description of the issues discovered during redecoration and the remedial measures taken are accepted as reasonable and the Tribunal therefore proposes to grant dispensation.
20. The Tribunal is however surprised that the bundle submitted was both excessive and irrelevant to the issues before the Tribunal. For this reason it proposes to make dispensation conditional.
21. Dispensation is granted from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works of repair to a failed brickwork arch to a window subject to none of the costs of this application being charged to the Lessees by way of service charge or any other means.
22. **In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
13 October 2020

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to RPSouthern@justice.gov.uk. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the appeal is seeking.